

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VINCENT JAMES DEPALMA,

Plaintiff,

v.

No. 1:25-cv-00127-JCH-JFR

RYAN JAY TIMMERMANS,

Defendant.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

Plaintiff, who resides in Arizona, asserted claims for breach of contract, dishonor, fraud, slander and unjust enrichment against Defendant, who resides in New Mexico. *See* Bill in Equity at 1-4, Doc. 1, filed February 6, 2025, (“Complaint”) (seeking \$114,250.00 in damages and stating the Court has diversity jurisdiction over this matter).

United States Magistrate Judge John F. Robbenhaar notified Plaintiff the Complaint failed to state a claim for:

- (i) “dishonor,” which Judge Robbenhaar construed as a negligence claim because there are no allegations that Defendant had a duty to respond to Plaintiff’s notices and correspondences seeking to resolve this matter and Plaintiff has not alleged any facts supporting his conclusory allegation that Defendant’s failure to respond caused injury to Plaintiff.
- (ii) fraud because the Complaint does not identify the false representations, does not state when Defendant made the false statements, and does not allege that Defendant knew those statements were false and intended to deceive Plaintiff.

- (iii) slander/defamation because there are no allegations showing that Defendant communicated the accusation to other people, that the other people understood the accusation to be defamatory and the accusation caused actual injury to Plaintiff's reputation.

See Order to Show Cause, Doc. 4, filed February 7, 2025.

Judge Robbenhaar ordered Plaintiff to show cause why the Court should not dismiss Plaintiff's negligence, fraud and defamation claims and to file an amended complaint. *See* Order to Show Cause (notifying Plaintiff that failure to timely show cause and file an amended complaint may result in dismissal of this case). *See* Order to Show Cause at 6.

Judge Robbenhaar also ordered Plaintiff, who did not pay the filing fee, to file an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) and notified Plaintiff that failure to file a Long Form Application may result in the Court denying Plaintiff's request to proceed *in forma pauperis*. *See* Order to Show Cause at 1, 6 (informing Plaintiff that the Short Form Application that Plaintiff filed does not provide sufficient information for the Court to determine whether Plaintiff is unable to pay the required fees).

Judge Robbenhaar subsequently granted Plaintiff's motion for permission to file electronically and *sua sponte* granted Plaintiff an extension of time to file an amended complaint a Long Form Application to proceed *in forma pauperis*. *See* Order, Doc. 6, filed February 19, 2025 (notifying Plaintiff that failure to timely show cause and file an amended complaint may result in dismissal of this case). Plaintiff did not show cause, did not file an amended complaint, and did not file a Long Form Application to proceed *in forma pauperis* or otherwise respond to Judge Robbenhaar's Orders by the March 12, 2025, deadline.

The Court dismisses this case because Plaintiff has not complied with Judge Robbenhaar's Orders and has not sought an extension of time to do so. *See* Fed. R. Civ. P. 41(b) ("If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action"); *Gustafson v. Luke*, 696 Fed.Appx. 352, 354 (10th Cir. 2017) ("Although the language of Rule 41(b) requires that the defendant file a motion to dismiss, the Rule has long been interpreted to permit courts to dismiss actions *sua sponte* for a plaintiff's failure to prosecute or comply with the rules of civil procedure or court's orders.") (quoting *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003)).

IT IS ORDERED that:

- (i) This case is **DISMISSED without prejudice**.
- (ii) Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form), Doc. 2, filed February 6, 2025, is **DENIED**.



SENIOR UNITED STATES DISTRICT JUDGE